

AMENDED IN ASSEMBLY APRIL 2, 2014

AMENDED IN ASSEMBLY MARCH 5, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1560

Introduced by Assembly Member Gorell

**(Coauthors: Assembly Members Bigelow, Chávez, Donnelly,
Hagman, Harkey, Jones, Nestande, and Waldron)**

(Coauthors: Senators Berryhill, *Cannella*, Gaines, Huff, and Vidak)

January 29, 2014

An act to add Section 100509 to the Government Code, relating to health care coverage, declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1560, as amended, Gorell. California Health Benefit Exchange: confidentiality of personal information.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires each state to establish an American Health Benefit Exchange by January 1, 2014, that makes available qualified health plans to qualified individuals and small employers. PPACA prohibits an Exchange from using or disclosing the personally identifiable information it creates or collects other than to the extent necessary to carry out specified functions. Existing law also requires an Exchange to establish and implement privacy and security standards that are consistent with specified principles and to require the same or more stringent privacy and security standards as a condition of contract or agreement with individuals or entities. A person who knowingly and willfully uses or discloses information in violation of PPACA is subject

to a civil penalty of no more than \$25,000 per person or entity, per use or disclosure, in addition to any other penalties prescribed by law.

Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014. Existing law requires the board to employ necessary staff and authorizes the board to enter into contracts. Under existing law, the board of the Exchange is required to submit fingerprint images to the Department of Justice for all employees, prospective employees, contractors, subcontractors, volunteers, or vendors of the Exchange whose duties include access to specified personal information for the purposes of obtaining state or federal conviction records, as specified.

This bill would prohibit the Exchange from disclosing an individual's personal information, as defined, to 3rd parties for the purpose of determining eligibility for, or enrolling the individual in, health care coverage unless, *prior to the disclosure, the individual confirms his or her eligibility for a qualified health plan offered by the Exchange, and receives an estimate for the cost of the qualified health plans he or she may purchase, and the Exchange obtains prior the individual's written consent to the disclosure*, as prescribed. The bill would also require the Exchange to immediately notify the public of any breach of the security of personal information created, collected, or maintained by the Exchange, regardless of the severity of the breach and regardless of whether personal information was acquired by an unauthorized person during the breach.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 100509 is added to the Government Code,
- 2 to read:
- 3 100509. (a) The Exchange shall not disclose an individual's
- 4 personal information to third parties for the purpose of determining
- 5 eligibility for, or enrolling the individual in, health care coverage

1 unless ~~the~~ both of the following requirements are satisfied prior
2 to the disclosure:

3 (1) The individual, through communication with the Exchange,
4 including the Internet Web site of the Exchange, confirms his or
5 her eligibility for a qualified health plan offered by the Exchange
6 and receives an estimate of the cost of the qualified health plans
7 offered by the Exchange that he or she may purchase.

8 (2) After paragraph (1) has been satisfied, the Exchange obtains
9 prior written consent.

10 ~~(b) To comply with subdivision (a), the Exchange shall include,~~
11 ~~as part of its application for health care coverage, including its~~
12 ~~online application, consent from the individual on a stand-alone~~
13 ~~item in 12-point font that requests the individual's consent for~~
14 ~~disclosure of personal information to third parties for the purposes~~
15 ~~of determining eligibility for, or enrolling the individual in, health~~
16 ~~care coverage.~~

17 ~~(e)~~

18 (b) The Exchange shall immediately notify the public of any
19 breach of the security of personal information, regardless of the
20 severity of the breach and regardless of whether personal
21 information was acquired by an unauthorized person during the
22 breach. This subdivision shall apply in addition to any other
23 disclosure requirements applicable to the Exchange, including, but
24 not limited to, Section 1798.29 of the Civil Code.

25 ~~(d)~~

26 (c) For purposes of this section, ~~personal~~ the following
27 definitions shall apply:

28 (1) "Exchange" includes an employee of the Exchange or a
29 member of the board of the Exchange.

30 (2) "Personal information" means any information that is
31 created, collected, or maintained by the Exchange that identifies
32 or describes an individual, including, but not limited to, his or her
33 name, social security number, physical description, home address,
34 home telephone number, education, financial matters, and medical
35 or employment history. "Personal information" includes statements
36 made by, or attributed to, the individual.

37 (3) "Third party" means a person or entity other than the
38 Exchange.

39 SEC. 2. This act is an urgency statute necessary for the
40 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 The California Health Benefit Exchange is currently releasing
4 to third parties the personal information of individuals using the
5 Covered California Internet Web site without their knowledge. In
6 order to protect the privacy rights of individuals applying for health
7 care coverage through the Exchange, it is necessary that this act
8 take effect immediately.

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